IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CR. NO. H-16-170 (7)
	§	
OMAR MAHER ALNASSER	§	

DEFENDANT'S MOTION TO REVOKE DETENTION ORDER

TO THE HONORABLE GRAY MILLER:

Omar Maher Alnasser, Defendant, is presumptively entitled to release on bond. *See* 18 U.S.C. § 3142. Pursuant to 18 U.S.C. § 3145(b), Alnasser moves this Court to revoke the Magistrate Judge Frances Stacy's detention order, attached as Exhibit A. Her finding that "there is a serious risk that the defendant will flee" is not supported by the evidence. Exhibit A at 2. Pretrial Services found that reasonable, standard conditions of release would secure Alnasser's appearance at all proceedings. The defense requests this Court to impose the conditions recommended by Pretrial Services.

Legal Standard.

"The command of the Eighth Amendment that 'Excessive bail should not be required…' at the very least obligates judges passing upon the right to bail to deny such relief only for the strongest of reasons." *Sellers v. United States*, 89 S.Ct. 36, 38 (1968). Doubts regarding the propriety of release "should always be resolved in favor of the defendant." *Herzog v. United States*, 75 S.Ct 349, 351 (1955); *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). "The presumption of innocence guarantees that defendants pending trial are entitled to a concomitant presumption in favor of bail in this country." *In the Matter of Extradition of Nacif-Borge*, 829 F.Supp. 1210, 1214 (D. Nev. 1993); *see also Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("This traditional right to freedom before trial permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction…unless this right to bail before trial is preserved, the presumption of innocence secured only after centuries of struggle would lose its meaning.")

The Bail Reform Act provides that an order of detention pending trial is appropriate if "no conditions or combination of conditions will reasonably assure the appearance of the person as required." 18 U.S.C. § 3142(e). It is crucial to note, however, that a finding that a particular defendant may present a "flight risk" does not end the matter with respect to whether detention should be ordered. Consistent with the Eighth Amendment's provision that "Excessive bail shall not be required,"

> 18 U.S.C. § 3142(b) requires a court to order the pre-trial release of a defendant on a personal recognizance bond "unless the [court] determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." If the court determines that a defendant's release on an unsecured bond presents a risk of flight, the concern at issue in this case, *the law still favors pre-trial release* "subject to the least restrictive further condition, or combination of conditions, that [the court] determines will reasonably assure the appearance of the person as required." *Id.* § 3142(c)(1)(B). Only if a detention hearing shows "that no condition or combination of conditions will reasonably assure the appearance of the person as required…shall [the court] order the detention of the person before trial." *Id.* § 3142(e). Under this statutory scheme, *"it is only a 'limited group of offenders' who should be denied bail pending trial." United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987) (quoting S. Rep. No. 98-225, at 7 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3189).
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> Because the law thus generally favors bail release, the government carries a dual burden in seeking pre-trial detention. First, it must establish by a preponderance of the evidence that the defendant, if released, presented an actual risk of flight. *See United States v. Berrios-Berrios*, 791 F.2d 246, 250 (2d Cir. 1986). Assuming it satisfies this burden, the government must then demonstrate by a preponderance of the evidence that no condition or combination of conditions could be imposed on the defendant that would reasonably assure his presence in court. *See United States v. Shakur*, 817 F.2d at 195 ("The burden of proof is on the government to prove the absence of such conditions by a preponderance of the evidence."); *United States v. Chimurenga*, 760 F.2d 00, 405 (2d Cir. 1985).

United States v. Sabhanani, 493 F.3d 63, 74-75 (2d Cir. 2007) (emphasis added); *see also*, *United States v. Madoff*, 586 F.Supp.3d 240, 247-248 (S.D.N.Y. 2009) ("The Government's task is not insubstantial at this second stage. In most cases, release is the presumptive state." (Citations omitted.).)

The Magistrate's Findings versus the Facts.

- **Finding**—The case agent testified about the manufacturing and distribution of synthetic cannabinoids and currency arising out of the drug trafficking activities. Exhibit A at 3.

  Facts—The case agent also testified that there was no evidence to show that Alnasser manufactured or distributed synthetic cannabinoids. Exhibit B, Pages 103-104 of Detention Hearing Record.

- **Finding**—The case agent testified that Alnasser was recorded in phone conversations with Ziad Mahmoud Alsalameh, a co-defendant. In one recorded conversation, they discussed whether Alnasser had deposited $100,000. The case agent testified that Alnasser deposited $50,000 into his [own] account and then another $50,000. The money was transferred to Cairo, Egypt and into the account of Alnasser's brother. The case agent testified that Alnasser and Alsalameh used code words for amounts in the recorded conversations. In addition to the wire transfer to Egypt, the case agent testified about a wire transfer from the United States to Jordan. The phone call setting up the wire transfer was recorded. Alnasser received $46,000 into his bank account and wired out $50,000 the next day. Two wire transfers of $100,000 went to Jordan to Alnasser's brother to pay Alsalameh's family….In all, Alsalameh had Alnasser wire transfer more than $400,000 overseas. The case agent testified that Alnasser was paid a percentage commission to move money out of the United States. Exhibit A at 3.

  Facts—Bank records show that Alnasser made several wire transfers on Alsalameh's behalf. The transfers were sent to Alnasser's brother's account at Cairo Bank in Jordan, not Egypt. Exhibit C, Page 75 of Detention Hearing Record. There were no transfers to Egypt. Alnasser knew that Alsalameh owned several convenience stores and cell phone stores in the Houston area that generated legitimate revenues.

  The agent presented no evidence that the transferred funds were proceeds from unlawful activity. Consequently, there was no evidence to show that Alnasser knew that the funds came from an illegal source.

- **Finding**—Alnasser moved money for other people after being requested to do so by Alsalameh. Exhibit A at 3.

  Facts—There is no evidence that Alnasser "moved money" for anyone other than Alsalameh. Exhibit D, Pages 119-120 of Detention Hearing Record.

- **Finding**—An electronic text message that Alnasser sent to his brother in Jordan reveals that he [(Alnasser)] was upset with Alsalameh over money. The text message suggests that Alnasser knew the nature of Alsalameh's business. Exhibit A at 3.

  Facts—Assuming that Magistrate Stacy meant to imply that "Alnasser knew the nature of Alsalameh's business" was illegal, the text message that she referred to in her finding was sent some time after Alnasser wired money to Jordan for Alsalameh. No money was transferred on Alsalameh's behalf after the text message was sent. There is no evidence that Alnasser knew that Alsalameh's business was illegal (if it was) before Alnasser wired money for him.

- **Finding**—The case agent further testified that Alsalameh had surrendered his passport to the Western District of Texas in an unrelated criminal proceeding and needed a new passport. Using his contacts in Jordan, Alnasser arranged for a Jordanian passport to be issued for Alsalameh, a codefendant, who is now a fugitive in this case.

  Facts—The indictment in this case was returned on April 28, 2016. Alsalameh sought and obtained a new passport in August 2014, almost two years *before* this case was filed. Exhibit E, Copy of Passport Issued on August 21, 2014.[1] He was not a fugitive in August 2014, and he was not prohibited from obtaining a new passport.

  Alsalameh needed a new passport because he surrendered his old passport to the Western District of Texas in October 2005 when he was released on bond in an unrelated case. Exhibit F, Conditions of Release. Alsalameh was eventually sentenced to 20 months in that case in January 2009. Exhibit G, Second Amended Judgment. Later that same year, the Western District transmitted Alsalameh's old passport to immigration officials, according to established procedures for foreign passports of incarcerated individuals. Alsalameh was on supervised release from June 28, 2010 until June 27, 2013, following his sentence. He had been off of supervised release for more than a year when he obtained his new passport.

  While Alsalameh was no longer subject to supervision in the Western District in August 2014, he was under supervision in the Southern District of Texas at the time. The United States Attorney's Office for the Southern District filed a motion identifying Alsalameh as a material witness on September 10, 2010. Exhibit H. The motion was based on Alsalameh's continuing cooperation with the government in the prosecution of another case. Alsalameh was released on conditions based on his material-witness status on October 22, 2010. Exhibit I. Those conditions were terminated on August 25, 2014, upon completion of Alsalameh's cooperation. Exhibit J. The conditions did not prohibit Alsalameh from obtaining a passport.

[1] The name on the passport is Ziad Mahmoud Ahmad Albataineh. Albataineh is Alsalameh's traditional, tribal name.

Alsalameh's new passport was issued on August 21, 2014, four days before his conditions of release in the Southern District were terminated. By that time, Alsalameh had been in the United States (mostly involuntarily) for more than nine years, not able to travel to his native Jordan. Still, he waited until June 29, 2015, to go home. He was not subject to any court order at the time. *See* Exhibit E, Arrival Stamp in Passport.

It is worth noting that Alsalameh's new passport is valid for five years from the date of issuance. The defense does not have access to Alsalameh's old passport, but it was almost certainly invalid in August 2014 when he sought a new one.

There was nothing wrong with Alsalameh seeking and obtaining a passport in August 2014. There was nothing wrong with Alnasser assisting Alsalameh in obtaining it. The assistance, if it amounts to that, consisted of Alnasser's brother telling Alsalameh's wife who to talk to at the passport office in Jordan. The issuance of Alsalameh's new passport two years before this case was filed was entirely regular and entirely legal.

- **Finding**—Alnasser was born and raised in Jordan. He moved to the United States in 2003. He became a naturalized citizen in 2011. He was married in 2014 to a Jordanian. Exhibit A at 3-4.

  Facts—Alnasser's wife is a natural-born United States citizen. Her parents are from Jordan. She has been employed as an optometrist at See-N-Focus Optical since July 2015.

- **Finding**—[Alnasser] has few financial or property ties to the community. Exhibit A at 4.

  Facts—Alnasser is a United States citizen. He attended college in the United States and obtained a M.A. and a Ph.D. in finance. He is employed as a professor at the University of Houston's Victoria campus. His students hold him in high regard and the university has confirmed that he is welcome to continue in his role there upon release. *See* Exhibit K, Student Evaluations and L, Offer of Employment.

  Alnasser and his wife recently purchased a residence in Fort Bend County at 1619 Stone Meadows Lane, Houston, Texas 77094. She is twenty-one weeks pregnant with the couple's first child.

Conclusion.

There is no legitimate basis to detain Alnasser pending trial. There are conditions that will secure his appearance at all future proceedings. The defense respectfully requests a prompt hearing on this motion, and upon such hearing, release on reasonable conditions.

Respectfully submitted,

DeGUERIN, DICKSON, HENNESSY & WARD

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Motion to Revoke Detention Order has been sent to all interested parties via the CM/ECF filing system, on June 8, 2016.

/s/Dick DeGuerin
Dick DeGuerin

CERTIFICATE OF CONFERENCE

My office attempted to confer with Assistant United States Attorney John Jocher by email on June 8, 2016. Mr. Jocher had not responded by the time that this motion was filed, but the defense expects him to be opposed to the relief sought.

Date: June 8, 2016

/s/Dick DeGuerin
Dick DeGuerin